

MAR 15 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

JOSE ISRAEL VILLATORO-BLANCO,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-73049

Agency No. A29-320-846

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 8, 2006**

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges.

Jose Israel Villatoro-Blanco, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals's ("BIA") order summarily affirming an immigration judge's ("IJ") order denying Villatoro-Blanco's motion

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

to reconsider the IJ's denial of Villatoro's motion to reopen proceedings in which he was deported *in absentia*. We have jurisdiction under 8 U.S.C. § 1252. We review the IJ's decision as the final agency order. *Falcon Carriche v. Ashcroft*, 350 F.3d 845, 849 (9th Cir. 2003). We review for abuse of discretion the denial of a motion to reconsider. *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002). We grant the petition for review and remand with instructions.

Villatoro-Blanco contends that he did not receive notice of his deportation hearing, which the government contends was sent by regular mail. He filed a motion to reopen and the IJ denied the motion without considering Villatoro-Blanco's evidence to rebut the presumption of delivery for service by regular mail. *See Salta v. INS*, 314 F.3d 1076, 1079 (9th Cir. 2002) (requiring a sworn affidavit that notice was not received). Because Villatoro-Blanco had no motive to avoid his deportation hearing, and he provided a sworn affidavit stating he did not receive a notice of hearing, he might be able to rebut the presumption of delivery. *Id.*

In light of *Salta*, we remand to the BIA with instructions to remand to the IJ for an evidentiary hearing to determine whether Villatoro-Blanco has rebutted the presumption that he received notice of his hearing.

PETITION FOR REVIEW GRANTED; REMANDED with instructions.